



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

EAG
F.#2010R00153

271 Cadman Plaza East
Brooklyn, New York 11201

May 25, 2012

By Hand Delivery and ECF

The Honorable Kiyo A. Matsumoto
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Gaetano Gallo
Criminal Docket No. 11-30 (KAM)

Dear Judge Matsumoto:

The government respectfully submits this letter in anticipation of sentencing in the above-captioned case, which is scheduled for June 11, 2012. For the reasons set forth below, the government respectfully asks the Court to sentence the defendant within the advisory Guidelines range of 18 to 24 months.

I. Background

On January 12, 2011, a grand jury in the Eastern District of New York returned an indictment charging the defendant, among numerous others, with four related counts of loansharking. On July 20, 2011, the defendant pled guilty, pursuant to a plea agreement, to a conspiracy to use extortionate means to collect and attempt to collect extensions of credit (Count Twenty-six). (Presentence Investigation Report ("PSR") ¶ 1.)

II. Discussion

The government respectfully submits that, in this case, a sentence within the advisory Guidelines range is appropriate in light of all relevant factors, including the nature and characteristics of the offense, the history and characteristics of the defendant, and the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, to

provide just punishment, to afford adequate deterrence and to protect the public.

A. Legal Standard

The Sentencing Guidelines are advisory, not mandatory. United States v. Booker, 543 U.S. 220, 258-60 (2005). However, the Supreme Court held in Booker that sentencing courts must consider the Guidelines in formulating an appropriate sentence. Id. In Gall v. United States, 552 U.S. 38 (2007), the Supreme Court set forth the procedure for sentencing courts to follow in light of Booker:

[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.

Gall, 552 U.S. at 49 (citation omitted). Next, a district court should "consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party. In so doing, [a district court] may not presume that the Guidelines range is reasonable. [A district court] must make an individualized assessment based on the facts presented." Id. at 49-50 (citation and footnote omitted).

B. The Guidelines Range Is 18 to 24 Months

The Probation Department has determined that the adjusted offense level is 17, the defendant is in Criminal History Category I, and the advisory Guidelines sentencing range is 24 to 30 months. (PSR ¶¶ 17-29, 58.) The government agrees with this determination, except that the government is prepared to move for an additional two-level reduction for a global disposition, pursuant to U.S.S.G. § 5K2.0. Therefore, the adjusted offense level is 15 and the advisory Guidelines sentencing range is 18 to 24 months.

C. A Sentence Within the Guidelines Range Is Appropriate In This Case

Based on the factors set forth in 18 U.S.C. § 3553(a), a sentence within the Guidelines range is appropriate in this case.

1. The Natures and Circumstances of the Offense

La Cosa Nostra ("LCN") and the Colombo organized crime family of LCN (the "Colombo crime family") are dangerous criminal enterprises that use violence, including murder, to further their interests. (PSR ¶¶ 2-7.) The defendant has been convicted of extortionate collection of credit conspiracy, *i.e.*, conspiring to collect loansharking loans backed by the threat of violence. This is a serious crime that warrants a serious punishment. 18 U.S.C. § 3553(a)(1).

The defendant, together with others, assisted Colombo crime family soldier Dino Saracino with Saracino's lucrative loansharking business. On multiple occasions in early 2008, Gallo accompanied Saracino to collect loanshark payments and otherwise assisted in the collection of Saracino's outstanding loans. When Dino Saracino was arrested in June 2008 and his loansharking profits were placed in jeopardy, the defendant played a significant part in identifying and locating Saracino's loansharking customers.

2. The Defendant's History and Characteristics

The defendant has been an associate of the Colombo crime family and LCN for several years. In 2007, the defendant became a close associate of Dino Saracino. For a period of time following Saracino's arrest, the defendant reported to Colombo family soldier Anthony Russo. He thereafter reported to a member of the Gambino organized crime family of LCN.

The defendant seeks a non-incarceratory sentence primarily on the ground that he suffered a serious gunshot wound in 1999. The government does not dispute that the defendant was seriously injured, but disagrees with the impact that the injury had on Gallo's participation in the affairs of the Colombo crime family and LCN. Notably, Gallo participated in the affairs of LCN both before and after his shooting.

Finally, the government disputes counsel's characterization of this conduct as "truly aberrational." (Def. Ltr. at 1). To the contrary, Gallo devoted several years to the goals of LCN and profited from his participation in, among other crimes, a variety of gambling and loansharking ventures. Furthermore, Gallo developed a reputation as an individual willing and able to threaten and use force in order to further the goals of LCN.

3. Reflecting the Seriousness of the Offense,
Promoting Respect for the Law and
Providing Just Punishment

A sentencing within the advisory Guidelines range is necessary to reflect the seriousness of the offense, promote respect for the law and providing just punishment. 18 U.S.C. § 3553(a)(2)(A). As noted above, the defendant's offense of conviction -- conspiring to use extortionate means to collect extensions of credit -- is a serious crime that is critical to the success of organized crime families and that merits a serious punishment. A serious term of imprisonment is therefore necessary in order to serve these important purposes of sentencing.

4. Affording Deterrence and Protecting the Public

A sentence within the advisory Guidelines range is necessary to afford adequate deterrence to criminal conduct and to protect the public from further crimes of the defendant. 18 U.S.C. § 3553(a)(2)(B) & (c). "Under section 3553(a)(2)(B), there are two major considerations: specific and general deterrence." United States v. Davis, No. 08-CR-332 (JBW), 2010 WL 1221709, at *2 (E.D.N.Y. March 29, 2010). Both considerations support the imposition of a serious term of imprisonment in this case. A sentence within the advisory Guidelines range is necessary to deter others who are in a position to choose between a law-abiding life and a life of crime.

III. Conclusion

In this case, given all of the facts and circumstances discussed above, a sentence within the Guidelines range is necessary in order to achieve the purposes set forth in 18 U.S.C. § 3553(a). Therefore, and for all of the foregoing reasons, the

government respectfully submits that the Court should impose a sentence within the advisory Guidelines range of 18 to 24 months.

Respectfully submitted,

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cc: Clerk of the Court (KAM) (by ECF)
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